

EXHIBIT 11

SPENCER

DEPOSITION

TRANSCRIPT

[Page 1]

March 13, 2024

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Docket Number: 22-CV-07662

-----X

KEVIN CAMPBELL,

Plaintiff,

-against-

FEDERAL EXPRESS CORPORATION, A/K/A FEDEX EXPRESS
AND ERIC WANDERS, INDIVIDUALLY,

Defendants.

-----X

VIA ZOOM VIDEO

March 13, 2024

10:10 a.m.

DEPOSITION OF A NON-PARTY WITNESS, ALDEMEL SPENCER, taken pursuant to the Civil Practice Law and Rules of Testimony, and Subpoena, held at the above-mentioned time and place before KAREN MCCONNELL, a Notary Public of the State of New York.

(1)

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(2) **A P P E A R A N C E S:**

(3)

(4) JESSICA MASSIMI LAW OFFICE

(5) Attorney for Plaintiff

(6) 99 Wall Street

(7) New York, New York 10005-4301

(8)

(9) BY: JESSICA MASSIMI, ESQUIRE

(10)

(11) FEDEX CORPORATION COUNSEL

(12) Attorneys for Defendant

(13) 3620 Hacks Cross Road-Building B

(14) Memphis, Tennessee 38125

(15)

(16) BY: GABRIEL P. MCGAHA, ESQUIRE

(17)

(18) ALSO PRESENT:

(19) SHARON DANIEL, PARA LEGAL WITH FEDEX

(20)

(21) *

(22)

(23)

(24)

(25)

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(1) VIDEO STIPULATIONS

(2) IT IS HEREBY STIPULATED AND AGREED by and

(3) between counsel for all parties present that

(4) this deposition is being conducted by Videoconference,

(5) that the Court Reporter, all counsel, and the witness are

(6) all in separate remote locations and participating via

(7) Videoconference (LegalView/Zoom/WebEx) meeting

(8) under the control of Lexitas Court Reporting Service,

(9) that the officer administering the oath to the witness said

(10) witness shall be sworn in remotely by the Court

(11) Reporter after confirming the witness's identity,

(12) that this Videoconference will not be recorded in

(13) any manner, and that any recording without the

(14) express written consent of all parties shall be

(15) considered unauthorized, in violation of law, and

(16) shall not be used for any purpose in this litigation

(17) or otherwise.

(18) IT IS FURTHER STIPULATED that exhibits may be

(19) marked by the attorney presenting the exhibit to the

(20) witness, and that a copy of any exhibit presented to

(21) a witness shall be emailed to or otherwise in

(22) possession of all counsel prior to any questioning

(23) of a witness regarding the exhibit in question. All

(24) parties shall bear their own costs in the conduct of

(25) this deposition by Videoconference.

(1) ALDEMEL SPENCER 4

(2) A L D E M E L S P E N C E R, having first been

(3) duly sworn by a Notary Public of the State of New

(4) York, was examined and testified as follows:

(5) **EXAMINATION CONDUCTED BY MS. MASSIMI:**

(6) Q State your name for the record.

(7) A **Aldemel Spencer.**

(8) Q Good morning, Mr. Spencer.

(9) A **Good morning.**

(10) Q My name is Jessica Massimi and I

(11) represent Kevin Campbell in this case that we are

(12) here to discuss today. I am the person that you

(13) spoke to yesterday. For the record, you called

(14) me yesterday; is that correct?

(15) A **Yes.**

(16) Q When you called me it was from an

(17) unknown number; is that correct?

(18) A **Yes.**

(19) Q Alright. You are not in trouble

(20) here today. I am not here to give you a hard

(21) time or anything like that, sir. I just really

(22) want to ask you some questions and just go over a

(23) couple of things.

(24) A **Okay.**

(25) Q A copy of the identification gets

(1) ALDEMEL SPENCER 5
(2) mailed to the Department Of State and it is for
(3) the Zoom purposes. There is no other record
(4) keeping purpose or anything like that. It is
(5) something that all witnesses do when they testify
(6) via Zoom these days. In terms of your address,
(7) if you want a copy of the transcript I can text
(8) it to you when it's available. I am okay with
(9) you not giving your address right now.
(10) **A Okay, you can send it through text.**
(11) Q During our communication yesterday I
(12) sent you a recording; is that correct?
(13) **A Yes.**
(14) Q Did you have an opportunity to
(15) listen to that recording?
(16) **A Yes.**
(17) Q Did you hear voices on that
(18) recording?
(19) **A Yes.**
(20) Q Whose voices did you hear?
(21) **A Mine and a FedEx security.**
(22) Q Are you referring to Mr. James
(23) Cahill?
(24) **A Yes.**
(25) Q What did you hear on the recording

(1) ALDEMEL SPENCER 6
(2) generally speaking, do you remember?
(3) **A We spoke about the incident that**
(4) **happened between Kevin and Augusto about the**
(5) **situation that happened.**
(6) Q Do you recall hearing yourself on
(7) the record saying something to the effect Augusto
(8) smashed a box and the box hit Kevin?
(9) **A Yes.**
(10) Q Is that in fact what happened?
(11) **MR. MCGAHA: Objection to the form.**
(12) **When I say objection to the form I am making an**
(13) **objection on the record, but you can still answer**
(14) **the question.**
(15) Q On the recording that I sent you,
(16) did you hear yourself say something to the effect
(17) Augusto smashed the box and the box hit Kevin?
(18) **A Yes.**
(19) Q Is that a truthful statement when
(20) you made it?
(21) **A Yes.**
(22) **MR. MCGAHA: Objection to the form.**
(23) Q Did you observe that happening?
(24) **A Yes, I did when it happened.**
(25) Q Okay.

(1) ALDEMEL SPENCER 7

(2) MS. MASSIMI: Off the record.

(3) (Whereupon, a discussion was held

(4) off the record.)

(5) Q Are you currently testifying from

(6) the same room with Mr. McGaha?

(7) A Yes.

(8) Q Are you comfortable doing so?

(9) A Yes, that is fine.

(10) Q Okay. Would you prefer to be in a

(11) separate room from Mr. McGaha or are you okay

(12) proceeding in the same room with him?

(13) A Either way I am fine. Either way it

(14) is fine.

(15) Q In preparation for today, have you

(16) spoken with any attorneys?

(17) A No.

(18) Q Have you spoken with Mr. McGaha in

(19) advance of today?

(20) A Not really. I spoken to him but

(21) nothing too serious.

(22) Q Okay. When you say nothing too

(23) serious, what do you mean?

(24) A He called me and said that I would

(25) have to do this deposition.

(1)

ALDEMEL SPENCER

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(2)

Q Do you recall when he called you,
approximately?

(4)

A The first time I heard from him was
maybe I want to say three weeks ago, or maybe a
month or so. That is the first call I ever
received. It was a little while back.

(8)

Q That was a phone call?

(9)

A Yes.

(10)

Q When he called you, what did he say
to you?

(12)

A He told me about the deposition, and
told me what it was regarding about the case and
all of that.

(15)

Q Okay.

(16)

A I don't remember exactly word for
word what was said, but that was the nature of
the conversations telling me that I have a
deposition in the case to do with Kevin Campbell.

(20)

Q Did he tell you the date of your
deposition?

(22)

A I honestly don't remember.

(23)

Q Do you recall telling me yesterday
the first time that you learned about the
deposition would be sometime last week?

(1)

ALDEMEL SPENCER

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(2)

A Yes, I got the official subpoena on

(3)

I want to say Thursday or Friday. That is when I

(4)

officially knew the first place was going to be

(5)

changed to Manhattan. It was like a location

(6)

thing. I found out of the location of it was

(7)

going to be on Friday and where it was going to

(8)

be. That is why I tried to get it changed to

(9)

yesterday. I called her yesterday. I found out

(10)

that it was going to be in Manhattan Thursday or

(11)

Friday when they gave me the actual subpoena that

(12)

was printed out, and that is when I saw where it

(13)

was going to be.

(14)

Q How did you get the subpoena, did

(15)

somebody hand it to you?

(16)

A E-mail or something else. It got

(17)

handed to me by the station manager.

(18)

Q Who is that?

(19)

A Eric Wanders gave it to me.

(20)

Q Repeat your response, sir.

(21)

A I said Eric Wanders brought me in

(22)

the office and gave me the actual hardcopy.

(23)

Before that I never saw the subpoena paper. I

(24)

never received the actual subpoena paper until

(25)

last week.

(1)

ALDEMEL SPENCER

10

(2)

Q When you say that you heard by word of mouth that you had a deposition, what do you mean?

(5)

A **May current manager now told me that I have a deposition coming up. He didn't know too much information. They came and gave me the actual subpoena last week.**

(9)

Q What is current manager's name?

(10)

A **Hassan Kennedy.**

(11)

Q What did he say to you about your deposition?

(13)

A **He told me to remember you have a deposition coming up. He originally told me when he had first told me about it he told me a Zoom call. He told me that it was going to be a Zoom call. I was assigned at a Fedex location where I work. That is when last week I had to find out that they put Wall Street. I thought that it was go to be a Zoom call from the location where I work.**

(22)

Q Is your current manager the first person to ever tell you that you this deposition was going to take place?

(25)

A **Yes.**

(1)

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(2)

Q Do you recall approximately when that was, was it yesterday, a month ago or do you know?

(3)

A It was a while ago. I would say a month or more.

(4)

Q Okay.

(5)

A It was while ago. He told me that it was going to be Zoom and gave me more information on it. The next thing I was being pulled into the office and they gave me the actual subpoena.

(6)

Q I am sorry to be tedious about this. It is not my intention to annoy or inconvenience you. I am trying to narrow a timeline when you first found out about it. Did you hear about this deposition first from your manager, is that the first time that you were told that you had to go to a deposition?

(7)

A Yes, he has been my current manager or two-and-a-half or three years. He is the first person I heard it from. When the situation occurred he didn't have too much information because he was not our manager. He told me that he got an e-mail regarding the situation and let

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(1)

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(2)

me know.

(3)

Q To be clear, you had not heard that you would have to appear for a deposition before your manager told you?

(4)

A Yes.

(5)

Q When you first learned about it, can you please tell me how that happened; did your manager come up to you at work, did he call you on the phone, did he text you or something else?

(6)

A No, he brought me in the office and said that he got an e-mail. He was not my manager when it happened. He didn't know much about it. He said I have an e-mail for something that happened. You have a deposition.

(7)

Q Do you recall what you said in response to him, if anything?

(8)

A Yes, I said what is this about. I didn't know what it was. I have never been in trouble or gone to court or anything. I didn't know what a deposition was. I had to do my own research to see what it was. He does not know who Kevin Campbell is. He said I don't know what is going on. It has to do with Kevin Campbell with Fedex.

(1)

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(2)

Q You are not in trouble here. I am not suggesting that you did anything wrong. You are not in trouble for any of this, okay?

(5)

A Yes.

(6)

Q Was that the end of that initial

(7) conversation with your manager?

(8)

A Yes, it was pretty much letting me know that I had a deposition coming. He didn't know when. He didn't tell me when it was. That was from the e-mail he had heard about it was from the actual subpoena. He told me I got it from the e-mail. I never saw this paper before.

(14)

Q Who is your direct manager's name?

(15)

A Hassan Kennedy.

(16)

Q You spoke to Mr. Kennedy initially when he said that you have would have a deposition but didn't know what date?

(19)

A Yes.

(20)

Q Is that right?

(21)

A Yes.

(22)

Q When is the next time that anyone said anything to you about this deposition either in person, on the phone, in their office or anything?

(1) ALDEMEL SPENCER 14

(2) A He did bring it. He did like I
(3) would say remind me like I want to say -- he
(4) would like every now and then say you have a
(5) deposition. I never knew that it was going to be
(6) in a place. I didn't find out where it was go to
(7) be until I got that paper that I have I believe
(8) Thursday. It was the end of the last week where
(9) I found out that I was going to go somewhere. I
(10) said what is this. I thought it was going to be
(11) a Zoom call and he said thought that it would be
(12) the same thing.

(13) Q How many times did he remind you
(14) that you were going to have a deposition?

(15) A I want to say maybe two or three
(16) times since then.

(17) Q Do you know why he was reminding
(18) you?

(19) A To let me know so I wouldn't forget.

(20) Q At some point, did you speak to
(21) someone, other than Mr. Kennedy about your
(22) deposition, or did somebody other than Mr.
(23) Kennedy speak to you about your deposition?

(24) A Excuse me?

(25) Q In other words, at some point Eric

(1) ALDEMEL SPENCER 15

(2) Wanders spoke to you about your deposition?

(3) A I literally only spoke to Eric about
(4) it until I got actual subpoena paper. I spoke
(5) with Hassan and Mr. McGaha. Those are the only
(6) two people I spoke to about it.

(7) Q After that initial conversation with
(8) Mr. Kennedy where he first told you that you
(9) would have a deposition, when is the very next
(10) time that you spoke to anybody or anybody
(11) mentioned your deposition to you?

(12) A I am not too sure on the timeframe.
(13) Like I said, I am not too sure. He would mention
(14) remember your deposition. I cannot give a
(15) certain timeframe.

(16) Q Is there anything that would trigger
(17) him to remind you about your deposition or why
(18) does he randomly remind you about your
(19) deposition, do you know?

(20) A I have no idea.

(21) MR. MCGAHA: Objection to the form.

(22) Q Do you recall when you first spoke
(23) to Mr. McGaha?

(24) A Maybe the first phone call a month
(25) or more ago.

(1)

ALDEMEL SPENCER

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(2)

Q Was that before or after you spoke to Mr. Kennedy for the first time about the deposition?

(5)

A That I am not sure. Honestly, I have so much going on in my mind I do different routes every day. I have so much on my mind I cannot remember exact times and dates.

(9)

Q That is okay. Do you recall what Mr. McGaha said to you during that first conversation?

(12)

A The only thing I recall is him telling me who he was and what the call was about the case. Other than that I don't remember much.

(15)

Q Did he mention the deposition on that call?

(17)

A I'm not sure. I just remember him telling me he was the lawyer of Fedex. At the time it was all new to me. I am not going to lie. I was brushing things off because I was not paying attention to like what does this have to do with me. What the hell does it have do to with me. I didn't care to be honest. It was one of those things that this cannot be serious and this happened years ago and now there is a

(1)

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(2)

hearing about it. I kind of brushed it off. He introduced himself as a Fedex lawyer. Beyond that I don't know.

(5)

(6)

Q Did you speak to Mr. McGaha at some point after that initial phone call?

(7)

(8)

A Yes, I spoke to him maybe once or twice after that.

(9)

(10)

Q Did you recall when those instances were, approximately?

(11)

A No, I'm not sure.

(12)

(13)

Q Okay. Do you recall what Mr. McGaha said to you during those conversations?

(14)

(15)

(16)

(17)

(18)

(19)

A Not really. I'm being honest. I was brushing off the whole situation honestly. I am not working and I am getting these calls. I have a lot on my mind already. Now I am in this situation. I don't remember anything or like hearing about this situation.

(20)

(21)

Q This is not being recorded by video. It is just being taken down by a court reporter.

(22)

A Yes.

(23)

(24)

Q Did you speak to Mr. McGaha last week when you received the subpoena?

(25)

A No, I didn't speak to him last week.

(1)

ALDEMEL SPENCER

18

(2)

Q On the phone?

(3)

A No.

(4)

Q To clarify, it was my understanding when you called me yesterday, and correct me if I am wrong, but when you called me yesterday it was my recollection that you said something about Eric Wanders and Mr. McGaha was on the phone when they were talking to you about the subpoena last week; is that correct?

(11)

A I was talking to Eric on the phone.

(12)

I was talking to Eric when he gave me the

(13)

subpoena.

(14)

Q You believe Mr. McGaha was on speaker phone or on the phone with Mr. Wanders?

(16)

A I believe on the phone with him. It might have been speaker. He gave me the paper, and they were talking and took the paper. I don't want anything to do this with. When I get frustrated I don't pay attention to things. I feel like I should not be here and dealing with this because it had nothing to do with me.

(23)

Q What did the conversation look like with Mr. Wanders last week?

(25)

A Between me and him?

(1)

ALDEMEL SPENCER

19

(2)

Q Yes.

(3)

A He gave me the paper and was expressing my feelings to him like I am telling you now. Why am I going there. He was telling me just go and take care of your business. That is pretty much what that conversation was is him giving me the actual subpoena and me expressing my feelings why I am dealing with this years later. I have a lot on my plate and my personal life. Just take care of your business. You don't want anything to happen. That is what that conversation was about. It was especially after finding out I had to go to Wall Street. It takes two hours and ten minutes to drive to New York City from Long Island but I have to deal this.

(17)

Q Did you tell Mr. Wanders during your conversation last week that it was inconvenient for you to go to 88 Pine Street?

(20)

A Yes.

(21)

Q What did he say, if anything, in response?

(23)

A I don't remember exactly. It was pretty much just go take care of your business honestly. I was trying to find a different

(1) ALDEMEL SPENCER 20

(2) location. Just do what you have to do. I don't
(3) know if he knew at that time. It is pretty much
(4) just go and take care of your business.

(5) Q Did you request that it be held in a
(6) different location?

(7) A Yes, I asked if it could be changed.
(8) I asked about the video. When I heard about this
(9) situation they told me it was on a Zoom call,
(10) which I assumed at the Fedex location until you
(11) find out it is the Wall Street location.

(12) Q Did you say to Eric what happened to
(13) the Zoom call and why isn't this going to be on
(14) Zoom, or anything like that?

(15) A Yes.

(16) Q What, if anything, did he say to you
(17) in response?

(18) A He said that is what they gave me.
(19) You have to go here.

(20) Q Okay.

(21) A Alright.

(22) Q Did you ask him about whether you
(23) were going to be paid for workday?

(24) A Yes.

(25) Q What did he say?

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(1) ALDEMEL SPENCER 21

(2) A He said that I would be paid for a
(3) workday.

(4) Q Okay. When you called me yesterday
(5) it is my recollection that you expressed concern
(6) as to whether you would, in fact, be paid for
(7) today, do you remember talking about that with
(8) me?

(9) A Yes.

(10) Q Where did that concern come from?

(11) A I was not sure how I was going to be
(12) paid. It has been clarified now and everything.

(13) Q Absolutely.

(14) A I have a family to take care of. I
(15) need to know one hundred percent how.

(16) Q I understand. Did you try to get
(17) confirmation from Mr. Wanders prior to today that
(18) you would get paid prior to calling me?

(19) A I am trying to make sure. They told
(20) me. I wanted to make sure that it going to be on
(21) next weeks paycheck. I wanted to make sure that
(22) it was going to be on next weeks paycheck. They
(23) told me that I was going to get paid. I was not
(24) sure how and when.

(25) Q Why were you unclear about that is

(1) ALDEMEL SPENCER 22

(2) what I am asking?

(3) A I am not sure. I wanted to make
(4) sure. That was my thing. I wanted to make sure.
(5) That was my way of making sure. I like to make
(6) sure of things.

(7) Q Okay. Are you aware that when I
(8) spoke with Mr. McGaha yesterday he actually told
(9) me that you would not be paid if you testified at
(10) 88 Pine Street?

(11) MR. MCGAHA: Objection to the form.

(12) A Repeat the question.

(13) MS. MASSIMI: Read it back.

(14)

(15) (The referred to was read back by
(16) the Reporter.)

(17) MR. MCGAHA: Objection to the form.

(18) A I heard that I wouldn't be paid if I
(19) did it somewhere, other than a Fedex office.

(20) Q That is kind of my question. 88
(21) Pine Street, do you know what type of facility 88
(22) Pine Street is?

(23) A No.

(24) Q It is a law office, are you aware of
(25) that?

(1) ALDEMEL SPENCER 23

(2) A I am now. I didn't know. I thought
(3) that they had a conference room. I never been
(4) down here. I didn't know if it was Fedex office
(5) or law office. I got an address and asked for a
(6) change because it was too far for me.

(7) Q To be clear, I would have been happy
(8) to accommodate that. My recollection is that
(9) yesterday when you called me that is the first
(10) time you and I ever spoke; is that correct?

(11) A Yes.

(12) Q To be clear, it was your
(13) understanding that if you testified, other than
(14) at a Fedex facility you would not be paid for
(15) today; is that correct?

(16) A Yes.

(17) Q I sent you forty dollars yesterday
(18) from my law firm bank account; is that correct?

(19) A Yes.

(20) Q Are you aware that I had offered
(21) weeks ago to send that money to you via any
(22) mechanism that was convenient for you?

(23) A No, the first time that I heard
(24) about the forty dollars was from you yesterday.
(25) They told me that I would be accommodated for my

(1)

ALDEMEL SPENCER

24

(2)

travel and whatever. I didn't know how. I

(3)

didn't know if it was going to come from you.

(4)

They told me that I would be accommodated for my
gas and travel.

(5)

Q Correct. Do you feel that you have
now been compensated for your gas and travel?

(6)

A Yes, if it was me going to Manhattan
it would not have been enough. Instead of taking
me two hours it took me forty minutes, which is
much better.

(7)

Q I understand completely, sir. I get
it. Did you speak with Mr. McGaha yesterday?

(8)

A Yes, I believe so. I had so many
phone calls yesterday it is ridiculous. I had so
many phone calls yesterday it was ridiculous. I
think I spoke to him for a brief second.

(9)

Q Do you recall what the two of you
spoke about?

(10)

A Yes, about I guess the location and
making sure that I was going to be there.

(11)

Q Did anybody ask you to sign anything
yesterday?

(12)

A Yes.

(13)

Q What were you asked to sign?

(1) ALDEMEL SPENCER 25

(2) A Basically a paper stating that the
(3) location was changed and it was requested by me.

(4) Q Do you recall speaking to me
(5) yesterday and stated that you also at one point
(6) wanted to testify from home on a day off?

(7) A Yes, you asked me would I be fine
(8) doing. I said I wouldn't mind doing it from home
(9) or anywhere. I want to get it over with. I want
(10) this chapter in my life closed. I never had to
(11) deal with court rooms and this before. This is
(12) not a good look for me. I just want to get it
(13) done and over with.

(14) Q What do you mean it is not a good
(15) look for me?

(16) A I don't deal with stuff like that.
(17) I live my life on a day to day basis making sure
(18) I get to my family and go to work. I don't deal
(19) with courts and anything like that. This is a
(20) new chapter in my life. I have a clean record.
(21) I have never been arrested or in jail. I never
(22) been in a courtroom. This is a new chapter in my
(23) life. I want it closed. I keep my life on a
(24) straight and narrow, and that is it.

(25) Q Do you recall yesterday thanking me

(1) ALDEMEL SPENCER 26

(2) for helping you obtain certainty for getting paid
(3) today?

(4) A Yes, I thanked for everything
(5) yesterday.

(6) Q So, I spoke to you several times
(7) yesterday; is that correct?

(8) A Yes.

(9) Q What is your understanding of the
(10) purpose of those phone calls yesterday?

(11) A The purpose of the phone calls was
(12) trying to figure out what was going on. The
(13) change of the location and getting paid those are
(14) the main things.

(15) Q That is my recollection, too.

(16) Anything else that you recall was discussed
(17) between us, other than what you already
(18) mentioned?

(19) A No, not that I can recall. Those
(20) were the three main things that we kept speaking
(21) about was the location and pay.

(22) Q Do you believe I have pressured you
(23) to testify in any particular setting?

(24) A No, to me it didn't matter if I was
(25) at Fedex or at home. I want to get it over with.

(1)

ALDEMEL SPENCER

27

(2)

It does not bother me where I am at.

(3)

Q Okay. Do you recall at one point stating that you preferred to be in a room with no one else around?

(6)

A I don't remember saying that. It does not matter to me. It does not bother me if somebody is here or not.

(9)

Q Okay.

(10)

A I did remember telling you whether someone is around me or not they won't change my answers or anything. Nothing like that ever bothered me. Like nobody in my life is going to change how I talk about something.

(15)

Q You said that you wanted to get this over with and nobody was going to influence your testimony; is that correct?

(18)

A Yes.

(19)

Q Okay. I am making sure that we are getting it on the record.

(21)

A Yes.

(22)

Q Is there anything that you want to mention about our conversation yesterday that we have not gone over yet?

(25)

A No.

(1)

ALDEMEL SPENCER

28

(2)

Q Do you feel uncomfortable being
asked to testify about your current employer?

(3)

A No.

(4)

Q You know Kevin Campbell?

(5)

A Yes.

(6)

Q How do you know Kevin?

(7)

A We used to work together.

(8)

Q What kind of worker was Kevin?

(9)

A A great worker. He did his job.

(10)

Q Do you recall the incident that lead
to him and Augusta being terminated?

(11)

A Yes.

(12)

Q Can you tell me what you call recall
about that?

(13)

**A The situation I am at split and
Kevin is at another split. Augusto does
recycling the boxes to get passed Kevin and
Augusto got mad that Kevin let in some boxes.
Some boxes will get by. It is running down on a
belt. That was his position like a box split.
Augusto and the box getting recycled. Kevin
let's boxes go by and it makes Augusto's job
harder. That day I recall some back boxes went
by and I saw Augusto coming around the belt with**

(1)

ALDEMEL SPENCER

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(2)

anger and he stepped up to Kevin. Some word were exchanged with Augusto that hit a box and the box hit Kevin. Kevin was like what is this about. Like I said, I cannot really hear what they are something saying. I'm assuming by hand gesturing and the next thing I know I see a blade coming out. I run down there to try to break them up.

(9)

Q Did you see Kevin bump into Augusto in anyway?

(11)

A From where I was I couldn't see nothing. They were already kind of close. I don't know if a bump happened. Like me I couldn't see a bump. They were already close enough that I don't know. I didn't see it personally.

(17)

Q Do you know Nan Malabach?

(18)

A I have seen her. I met her a few times. I don't think that she would know me by name.

(21)

Q What race is she?

(22)

A Caucasian, I believe.

(23)

Q How long have you been working at FedEx?

(25)

A Eight years now.

(1)

ALDEMEL SPENCER

30

(2)

Q Do you feel comfortable talking to
me about your experience at Fedex?

(4)

A I don't understand my experience at
Fedex has to do with Kevin Campbell and Augusto's
case. I understand that I am testifying about a
fight between Augusto and Kevin. Anything
further than that I have no idea.

(9)

Q Okay. Understood.

(10)

A That is what I was told. This is
strictly about Augusto and Kevin's situation that
I broke up. Anything passed that I have no
comment or nothing. I am here about that
situation.

(15)

Q Do you feel comfortable answering
questions about whether there is racism at the
location where you work for Fedex?

(18)

A I was brought in here for the Kevin
Campbell and Augusto's fight. I have no comment
on that about racial discrimination. You cannot
bring me for one thing and ask me questions about
something else. I will answer any questions that
you have about Kevin Campbell and Augusto's
situation. Racism I have nothing to do with
that. You have to take care of that on your own.

(1)

ALDEMEL SPENCER

31

(2)

I got brought in for one thing about the fight situation. A racial situation that is a curve ball. I have nothing to do or say about that.

(5)

(6)

(7)

(8)

(9)

(10)

Q To be clear, the subpoena that was served on you said that you were being directed to testify in part about your employment with FedEx. I'm going to hold off on that for now because I hear what you're saying. I am going to ask you some questions. What is your race?

(11)

A African American.

(12)

Q Okay.

(13)

(14)

(15)

(16)

(17)

(18)

(19)

(20)

(21)

A When you say hold on this for now, what does this mean; is this going to come back later to affect me? I would like to be done with this situation today when it comes to the Kevin and Augusto's situation and a blade. I was there for that. Any racial discrimination part of this case I don't want anything to do with it. I am testifying on the facts that he got hired with something to did with Augusto.

(22)

(23)

Q Do you think Kevin's termination was justified?

(24)

MR. MCGAHA: Objection to the form.
You can answer.

(1)

ALDEMEL SPENCER

32

(2)

A I don't like to see anybody lose

(3)

their job honestly. Me personally I don't think
it is right, because from what I saw he was just
protecting himself from being cut. I don't feel

(4)

like it is right that he got fired, because he
was protecting himself from being cut. I saw him
holding Augusto's hand and Kevin is a big guy.

(5)

He is a big guy. He could have hurt him. I saw
him holding a blade back and getting cut. In
that situation I felt that it was not fair. If
Kevin wanted to do damage he didn't. He just
protected himself. That is how I saw it.

(6)

Q I am going to hold off on asking you
any further questions about racial discrimination
at Fedex, but I want to let you know that your
employer cannot retaliate against your testimony
here today. They cannot take any adverse action
against you for even appearing here today. They
cannot take any adverse action against you for
even being listed as a witness.

(7)

A You told me yesterday on the phone
this. I understand.

(8)

Q I want you to be aware of your
rights. You can Google if you have more

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(1) ALDEMEL SPENCER 33

(2) questions about it, and ask another attorney or
(3) something like that. You cannot be retaliated
(4) against for even being listed as a witness for
(5) the Plaintiff in an employment discrimination
(6) case. There are laws pursuant to city, state and
(7) Title Seven that protect your rights as someone
(8) who is testifying. I want to tell you that
(9) because you are the first nonmanagement current
(10) Fedex employee to testify in this litigation.

(11) **A Okay.**

(12) **Q Do you understand that?**

(13) **A Yes, I understand.**

(14) **Q I do not have any further questions**
(15) **for you. Is there anything that you want to say**
(16) **that you feel that you did not get a chance to**
(17) **say?**

(18) **A No, I was just saying the question**
(19) **that you asked me about Kevin being fired. In**
(20) **this case I don't know how that status is going.**
(21) **I fell like that was not justified.**

(22) **Q It was not.**

(23) **A All he did was protect himself. I**
(24) **know that is the main reason why he got fired.**
(25) **When you see a bigger guy holding down a smaller**

(1) ALDEMEL SPENCER 34

(2) guy with a weapon he is trying to keep his job.

(3) That is what I saw.

(4) Q Meaning Kevin is trying to keep his
(5) job?

(6) A Yes.

(7) Q Right.

(8) MS. MASSIMI: I appreciate your
(9) time. Thank you very much.

(10) MR. MCGAHA: I have some questions.
(11) Give me a second, please.

(12) EXAMINATION BY MR. MCGAHA:

(13) Q I am Gabriel McGaha and we have
(14) spoken a couple of times as mentioned in
(15) reference to a Fedex employee Eric Wanders, who
(16) is the Defendant in this case. I am not your
(17) attorney. That is the first time that I told
(18) you; is that right?

(19) A Yes.

(20) Q I am here to ask questions to learn
(21) more about what you have personal knowledge of as
(22) it relates to facts alleged in this case, does
(23) that make sense?

(24) A Yes.

(25) Q You mentioned earlier in your

(1) ALDEMEL SPENCER 35

(2) testimony that you and Miss Massimi --

(3) **MS. MASSIMI: I did not hear**

(4) **anything that you said. Read it back, please.**

(5)

(6) (The referred to was read back by

(7) the Reporter.)

(8) Q You mentioned earlier in your
(9) testimony that Miss Massimi asked you about the
(10) box situation and the incident, and she was
(11) asking you about a audio recording that she
(12) apparently played for you yesterday; is that
(13) correct?

(14) A Yes.

(15) MS. MASSIMI: No, I did not play an
(16) audio recording for him.

(17) MR. MCGAHA: He answered the
(18) question.

(19) MS. MASSIMI: I did not play a audio
(20) recording for him.

(21) A Repeat the question. Maybe I heard
(22) it wrong. Please repeat the question.

(23) MR. MCGAHA: Please don't make
(24) speaking objections that coach the witness.

(25) MS. MASSIMI: I did not play an

(1)

ALDEMEL SPENCER

36

(2)

audio recording for him yesterday. Don't say

(3)

that. I sent him a audio recording via text.

(4)

Proceed with your questioning. I did not play an

(5)

audio recording for him. I did not.

(6)

MR. MCGAHA: I am asking the

(7)

witness, Mr. Spencer, questions. Mr. Spencer is

(8)

not represented by by counsel today. I am asking

(9)

Miss Massimi to conduct herself professionally and

(10)

within the confines of the rules of civil

(11)

procedure, which does not allow her to make

(12)

speaking objections.

(13)

MS. MASSIMI: You said that you

(14)

never deposed this witness. This is my

(15)

deposition. I am permitted to ask him questions.

(16)

I am telling you right now I did not play an audio

(17)

recording for this man. You can clarify that by

(18)

asking him.

(19)

MR. MCGAHA: Please don't make

(20)

speaking objections.

(21)

MS. MASSIMI: I did not play an

(22)

audio recording for him. Please proceed with your

(23)

questions.

(24)

MR. MCGAHA: Please don't make

(25)

speaking objections while I am questioning.

(1) ALDEMEL SPENCER 37

(2) MS. MASSIMI: I am going to correct
(3) false statements. You asked him if I played audio
(4) recordings for him. Please be respectful of the
(5) witness. I know yesterday that you told me that
(6) you do not care about Mr. Spencer's inconvenience
(7) because according to you he is just a worker. I
(8) do not hold that view. Please proceed with your
(9) questions.

(10) MR. MCGAHA: I am going to ask you
(11) again to please be professional.

(12) MS. MASSIMI: I have been
(13) professional. You have been extremely rude to me
(14) and even rude to your own employees. Please
(15) proceed with your questions. I am not here to
(16) tolerate your unprofessional and untruthful
(17) statements. Nobody played an audio recording for
(18) him. If you want to play it now, please proceed.

(19) MR. MCGAHA: Please stop making
(20) speaking objections.

(21) MS. MASSIMI: Proceed with the
(22) deposition. This is unfair to Mr. Spencer.
(23) Please proceed.

(24) Q You were asked earlier about an
(25) incident that occurred between Mr. Alzate and

(1) ALDEMEL SPENCER 38

(2) Kevin Campbell on the belt; is that correct?

(3) **A Yes.**

(4) Q The belt line?

(5) **A Yes.**

(6) MS. MASSIMI: I guess part of the

(7) issue is that I think Mr. Spencer maybe signed

(8) out. I cannot see Mr. Spencer in the camera.

(9) Thank you, sir. I appreciate that.

(10) Q You were asked about an audio
(11) recording of an interview between you and James
(12) Cahill, do you recall being asked about that?

(13) **A Who asked about who?**

(14) Q Anybody today.

(15) **A Was I asked about a recording today?**

(16) Q Yes.

(17) **A Yes, a little while ago.**

(18) Q Who asked you that question?

(19) **A The lawyer, Miss Massimi.**

(20) Q Have you ever heard that audio
(21) recording?

(22) **A Have I ever heard it before it got
(23) sent to me?**

(24) Q Have you ever heard the audio
(25) recording period?

(1) ALDEMEL SPENCER 39

(2) **A** **Yes.**

(3) Q When did you hear the audio
(4) recording?

(5) **A** **For the first time yesterday.**

(6) Q Who sent you the audio recording?

(7) **A** **Miss Massimi.**

(8) Q She sent you an audio recording of
(9) an interview that you did with Mr. Cahill
(10) relating to an incident that we have discussed
(11) regarding Mr. Campbell and Augusto Alzate; is
(12) that correct?

(13) **A** **Yes.**

(14) Q Thank you for clarifying that. You
(15) mentioned that you listened to the audio
(16) recording; is that correct?

(17) **A** **Yes.**

(18) Q You stated that in the audio
(19) recording you said, "Augusto smacked the box and
(20) the box hit Kevin. "Do you recall saying that?

(21) **A** **Yes.**

(22) Q My question to you is, first of all,
(23) how far away from Mr. Campbell were you standing
(24) at the time this incident occurred?

(25) **A** **I would say about the length of**

(1) ALDEMEL SPENCER 40

(2) positioned from maybe from like where the cabinet
(3) ends right here to the TV. A little bit of a
(4) distance. Not too far.

(5) Q About how many feet is that?

(6) A Maybe fifteen to twenty feet.

(7) Somewhere between that.

(8) Q How far away were you sitting from
(9) Augusto at that time?

(10) A From the time when that happened I
(11) would say the same distance because he had walked
(12) up to Kevin. They are basically in the same spot
(13) now.

(14) Q Alright. At the time that this
(15) incident occurred, did you see the box that
(16) Augusto had and he was pushing, did you see that
(17) box?

(18) A It is more like he comes up the belt
(19) with the box, but they go to the HL belt where
(20) Kevin is standing right in front of. It was more
(21) of a push down the belt.

(22) Q Are you saying that --

(23) A It is like he --let's say my phone
(24) is a box. This is another box. It is like he
(25) hits the box and then he hits Kevin and slammed

(1)

ALDEMEL SPENCER

41

(2)

the box, and then the box didn't hit Kevin.

(3)

Q Did it appear that he hit Kevin on purpose with the box from your vantage point?

(4)

A I really would not be able to tell.

(5)

It was more like it could be, but it can not.

(6)

When somebody is angry you don't know what their intentions are. I cannot tell the intentions.

(7)

It is like a fast situation. I don't know if he did it on purpose or then another belt to push it to where it is supposed to be. He was mad. I don't know what his intention is or not.

(8)

Q Did you see the box make contact with Mr. Campbell?

(9)

A Yes, I did.

(10)

Q How hard did it hit Mr. Campbell?

(11)

A That I wouldn't be able to tell how hard it was. It soon did make contact with him.

(12)

Q Do you know where it hit him?

(13)

A I would say he was facing the belt. I guess the chest area. The lower chest area, I guess.

(14)

Q Do you recall giving a written statement related to this incident?

(15)

A I might have. I don't recall

(1) ALDEMEL SPENCER 42

(2) honestly. I might have.

(3) MR. MCGAHA: I am going to share my
(4) screen and show you a document.

(5) Q I am showing you a document, do you
(6) see it?

(7) A Yes.

(8) Q What does this appear to be?

(9) A A statement form.

(10) Q Is that your handwriting?

(11) A Yes.

(12) Q Take a couple of minutes, or however
(13) long you need to read through that and make sure
(14) that you get familiar with it so I can ask you
(15) some questions about it.

(16) A Okay.

(17) Q That is your written statement?

(18) A Yes.

(19) Q Looking at this written statement
(20) that I am showing you, and you are say, "I was
(21) standing at the split. I looked up to my right
(22) and I saw Augusto going up to Kevin saying
(23) something. I could not hear what was said. I
(24) was too far." Is that accurate?

(25) A Yes, because in a situation like

(1)

ALDEMEL SPENCER

43

(2)

that when the box running down the belt you
cannot really hear all the way down the belt.

(4)

Like I said, I'm not dumb. I know what actions
are when you see somebody with their hands up
what are you doing. I cannot say -- I know what
is going on, because I know their job positions.

(8)

(9)

Q Was Augusto facing you or his back
towards you?

(10)

A Kevin's back was towards me and
Augusto was facing me. Augusto wouldn't be able
to see. I knew he was there.

(13)

Q If Kevin was in front of you and

(14)

bigger than Augusto, how would you see Augusto?

(15)

(16)

(17)

(18)

(19)

(20)

(21)

(22)

(23)

(24)

(25)

A His arms to the side. He is making
gestures and stuff. I seen him walk up. I knew
that he was there doing his job to keep coming up
and bringing boxes going by. I am not thinking
that something is about to happen. I am thinking
Augusto is doing his job. I'm going to do what I
am doing. Then I see what is going on and then I
see a blade. At the time the blade came out
right away and Kevin grabbed his hands. Nobody
wants to be cut. I ran down and people from LG
belt started jumping over to diffuse the

(1)

ALDEMEL SPENCER

44

(2)

**situation as the same thing I did running down
from the split.**

(4)

Q It says next, "I then saw Augusto.

(5)

The next thing I know see a knife in Augusto's
hands. I ran over to try to diffuse the
situation." This statement does not say that you
saw a box hit Kevin, does it?

(9)

A No.

(10)

Q Do you know why it does not say it?

(11)

A Because I didn't write it.

(12)

Q Why didn't you write it?

(13)

**A In situations like this I jotted
down real quick and trying to get away from the
situation. I like to get out of things as fast
as get put into them especially in situations
that does not have to do with me.**

(18)

Q You said that you saw Augusto
pushing the box; is that correct?

(20)

A Yes, I seen him hit the box.

(21)

Q You don't know whether or not he
pushed the box and hit Kevin on purpose; is that
correct?

(24)

A I don't know if it was intentional.

(25)

Q You did see him the box made

(1) ALDEMEL SPENCER 45

(2) contact?

(3) A Yes, the box did make contact. I
(4) don't know what his intention was. The box made
(5) contact with him.

(6) Q Have you ever seen the surveillance
(7) videos associated with this incident?

(8) A No.

(9) MS. MASSIMI: Can we take a
(10) one-minute break.

(11) (Whereupon, a one-minute break was
(12) taken.)

(13) Q I am going to share my screen again.
(14) I am going to show you surveillance videos from
(15) two separate angles from the incident that we
(16) have been discussing today that occurred on the
(17) belt line.

(18) A Yes, sir.

(19) Q I want you to tell me, because I
(20) have a couple of questions for you about it. I
(21) want to pay close attention and make sure that
(22) you can see from your laptop what I am showing
(23) you.

(24) A Okay.

(25) Q I am going to play this video. Are

(1) ALDEMEL SPENCER 46
(2) you ready?
(3) A Yes.
(4) Q Did you need a break?
(5) A No, I am good.
(6) Q If you need a break let me know.
(7) Can you see this full screen?
(8) A Yes, sir.
(9) MS. MASSIMI: Can you please
(10) identify this video by batch number if it was
(11) produced.
(12) MR. MCGAHA: This is FEC1488.
(13) Q I am going to pause it. Do you know
(14) approximately where you stood on this belt?
(15) A It is not shown in the video. I had
(16) already ran from where I came from. You cannot
(17) actually see.
(18) Q I am going to rewind it. Where did
(19) you stand on this belt?
(20) A Before the camera being see.
(21) Q You are towards the bottom part?
(22) A Yes, the lower half. You see me run
(23) over eventually. You can see --I cannot see
(24) where I am standing. Maybe three or four feet
(25) before the camera.

(1)

ALDEMEL SPENCER

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(2)

Q You said that your standing about fifteen or twenty feet away from Mr. Campbell?

(4)

A **Like between fifteen and twenty feet and maybe less. Not that far. I am not too sure. That is me running over.**

(7)

Q You are going over there to try to break the situation up?

(9)

A **Yes, I saw everybody else started jumping over the belt.**

(11)

Q I am going to show you another video now. This is FEC1489. I will pause it.

(13)

MR. MCGAHA: **Can you give me one second, please. Off the record.**

(15)

(Whereupon, a discussion was held off the record.)

(17)

Q Who is this gentleman right here on the phone, do you know him?

(19)

MS. MASSIMI: **Can you re-share that. I don't see it.**

(21)

MR. MCGAHA: **Alright.**

(22)

Q Do you know this gentleman on the phone, and this is FEC1489? I am referring to the guy on the phone at the 00000 mark to the left, do you see the gentleman to the left of the

(1) ALDEMEL SPENCER 48
(2) screen?
(3) A Yes.
(4) Q Do you know who that is?
(5) A I remember him from the time
(6) working.
(7) Q Do you know his name?
(8) A No, I remember him being there. He
(9) had not been there for a while. I cannot say I
(10) remember him.
(11) Q Did he stay stationary in that place
(12) at that corner, if you remember?
(13) A I just know that he there for that
(14) day. They usually switch people and put somebody
(15) different there everyday. I don't know if he was
(16) there ever single day.
(17) Q I will play the video.
(18) A I am not on this belt, but the next
(19) belt down. I am not sure who they would have
(20) here most of the times.
(21) Q Let me see if you recognize somebody
(22) else on the screen?
(23) A Yes.
(24) Q Is that Kevin Campbell right there?
(25) A Yes, that is Kevin.

(1)

ALDEMEL SPENCER

49

(2)

Q How many feet would this gentleman here be from Kevin Campbell, the gentleman on the left, how many feet is that?

(5)

A **Less than five feet about. They are pretty close.**

(7)

Q Let's see. I'm going to play more of the video. There is a person walking up. I want you to tell me if you recognize that person when he comes into the screen?

(11)

A **Okay. That is Augusto. I see the hand gestures already.**

(13)

Q I am going to stop right there.

(14)

A **I am sorry.**

(15)

Q You see the gentleman on the far right who is walking this way?

(17)

A **Yes, that is Augusto.**

(18)

Q Is Augusto's job to come down this way?

(20)

A **Yes, he has to bring the boxes to get passed. This is the LGA box. He is supposed to bring boxes here that this box makes. Kevin's job right here is to push these boxes down to his belt. If he let's them go down Augusto them back up back to Kevin. He has to approach Kevin.**

(1)

ALDEMEL SPENCER

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(2)

They don't have to say anything to Kevin. He does not have to talk to him because he has to come up.

(5)

(6)

(7)

(8)

Q When you say this belt that Augusto brings the boxes back to, are you referring to the belt that is behind the truck that is in the screen?

(9)

A Yes.

(10)

(11)

(12)

Q So, it is the belt that is perpendicular to the belt that you, Augusto and Kevin are standing on; is that correct?

(13)

A Yes.

(14)

(15)

Q Augusto is bringing and he is recycling?

(16)

A Yes.

(17)

(18)

(19)

Q By recycling, what you mean is that if a box passes Kevin he has to bring the box back?

(20)

A Yes.

(21)

(22)

Q And onto the belt that is behind the truck; is that right?

(23)

A Yes.

(24)

(25)

Q So, is that what Augusto was doing based on what you were observing walking towards

(1) ALDEMEL SPENCER 51

(2) Kevin?

(3) MS. MASSIMI: Objection. At what
(4) point? Objection.

(5) MR. MCGAHA: I ask the questions.

(6) MS. MASSIMI: Don't speak to me that
(7) way. This is not your deposition, sir. If you
(8) recall you did not subpoena this witness. Please
(9) explain what you are talking about. Please
(10) identify what you are talk about.

(11) Q When you see Augusto walking down
(12) from the top right corner of the screen towards
(13) Kevin we are at the fourteen-second mark?

(14) A Yes, sir.

(15) Q Does he appear to be coming that way
(16) to move a box that he is recycling to the other
(17) belt?

(18) A As you can see right next to Augusto
(19) there is a box on the floor. Even if boxes fall
(20) off the belt he has to come pick them up. I
(21) would guess picking up the box that is moving out
(22) the way. He is already frustrated.

(23) Q Do you know why he is frustrated?

(24) A Because the recycling makes his job
(25) harder. I assume that is why he was frustrated.

(1) **ALDEMEL SPENCER** **52**

(2) Q Okay. I am playing the video. Pay
(3) attention to the bottom right-hand corner.

(4) **A Yes, sir.**

(5) Q Does this appear to be the two of
(6) them in a verbal altercations at the
(7) seventeen-second mark?

(8) **A Yes, from what I can see. Like I**
(9) **said previously I went by Augusto's hand**
(10) **movement. He kept putting his hands up. I would**
(11) **think what are you doing? What are you doing?**

(12) Q I am going to continue to play the
(13) video.

(14) **A Okay.**

(15) Q At the eighteen-second mark I
(16) believe you said that you saw earlier and
(17) testified that you saw Augusto pushing a box?

(18) **A Yes, he had hit a box.**

(19) Q Is that the box that you are
(20) referring to at the eighteen-second mark, and I
(21) will play it again so that you can see it again?

(22) **A Okay.**

(23) Q Was that it?

(24) **A I believe so, yes.**

(25) Q What do you see?

(1) ALDEMEL SPENCER 53

(2) **A I saw him hit a box.**

(3) Q When you saw Augusto pushing the box

(4) that you are referring to towards Kevin Campbell,

(5) how do you see Mr. Campbell reacting?

(6) **A I see what are you doing.**

(7) Q Is Kevin Campbell approaching

(8) Augusto at that point? I will play it again. We

(9) are at the eighteen-second mark.

(10) **A Yes.**

(11) Q There is no way for me to do it

(12) slower. I can replay it.

(13) **A Yes, sir.**

(14) Q I replayed it at the eighteen-second

(15) mark. How do you see Mr. Campbell reacting to

(16) Augusto pushing the boxes towards Kevin?

(17) **A Basically, he turns on him like what**

(18) **are you doing. That is what I see. Why are you**

(19) **hitting boxes at me.**

(20) Q Do you see Kevin Campbell

(21) approaching Alzate?

(22) **A It looks to me like he just turned**

(23) **to the side. He turned to the side. Augusto is**

(24) **already right next to him. He turned to the side**

(25) **and was right there already.**

(1)

ALDEMEL SPENCER

54

(2)

Q I am going to play it again. I am going to have you look at Kevin Campbell's position at the eighteen-second mark and then I want you to tell me whether or not you turned to the side, or whether or not he actually approached Mr. Alzate?

(8)

MS. MASSIMI: Objection. The

witness has already answered that question.

(10)

Q Are you ready? I am going to play it again.

(12)

A Yes.

(13)

Q Did you see that?

(14)

A Yes.

(15)

Q At the seventeen-second mark -- I mean the eighteen-second mark, can you see Mr. Campbell in the screen, at all?

(18)

A Now I see Augusto's head.

(19)

MS. MASSIMI: I am going to object. The bottom of this frame is obscured by the time bar and the stamp. You are asking him questions about some portion of this video that is clearly obscured.

(24)

MR. MCGAHA: I am asking him questions.

(1)

ALDEMEL SPENCER

55

(2)

MS. MASSIMI: The above frame that you are asking him about is obscured. You have asked this witness. He is your employee. He gave you his response. I didn't say anything about the problem with what you are showing him. I am going to make a record that what you are showing him as several things are obscuring the bottom. You can proceed out of respect for the witness so that we can move this along.

(11)

MR. MCGAHA: Are you done?

(12)

MS. MASSIMI: You did not want to take part in this subpoena. This is not really your deposition. We are just sitting here while you collect your thoughts. If you have further questions, please ask them.

(17)

Q I am going to ask you questions about what you see in this video. You can answer the questions based on what you see. If you don't see anything or you don't understand what I am asking you then you are welcome to say that, does that make sense?

(23)

A Yes.

(24)

MS. MASSIMI: Sorry. I am having trouble now seeing you. I need to leave and then

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(1) ALDEMEL SPENCER 56

(2) come back in. Off the record.

(3) (Whereupon, a discussion was held
(4) off the record.)

(5) MS. MASSIMI: Thank you for
(6) re-sharing it.

(7) Q I want you to pay attention to the
(8) bottom right-hand side of the screen, okay?

(9) A Yes.

(10) Q I am going to ask you about Mr.
(11) Campbell's position.

(12) MS. MASSIMI: Mr. McGaha, is there a
(13) way for you to share this screen so that the
(14) bottom part is not obscured the way it is? It is
(15) clearly obscured. There is shading at the bottom
(16) of the screen. Can you move this and share it in
(17) another way and put control bar or time bar to the
(18) top?

(19) MR. MCGAHA: I am asking Mr. Spencer
(20) what he sees.

(21) MS. MASSIMI: I am having trouble
(22) seeing this portion of the screen because it is
(23) the way that you are sharing it. It is obscured.
(24) Please share it another way so that we can all
(25) clearly see what you are questioning him about.

(1)

ALDEMEL SPENCER

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(2)

MR. MCGAHA: You are improperly
making speaking objections. I don't care.

(4)

MS. MASSIMI: What don't you care
about? Let's not be rude here. What is it that
you don't care about? Because yesterday it was
that you did not care about this witness's
inconvenience. You did not care about my opinion
regarding his convenience. What is it today that
you don't care about? I'm asking to you share the
screen so that we can all see it unobscured. I
think you have control of that.

(13)

MR. MCGAHA: You cannot see
anything.

(15)

Q If you cannot see anything, please
let me know. This is the best that we can do.
This is not at a perfect angle. We didn't know
that this was going to happen today at this
time.

(20)

MS. MASSIMI: It is not about the
angle, but about the fact there is shading at the
bottom of the screen that has nothing to do with
what is actually depicted in the moment.

(24)

Q You can answer the question if you
can see it. If you cannot you can say that.

(1) ALDEMEL SPENCER 58

(2) **A** **Yes.**

(3) Q We are at the eighteen-second mark,
(4) do you see Mr. Kevin Campbell anywhere in the
(5) screen?

(6) **A** **At the moment, no.**

(7) Q I will play the video up to the
(8) twenty-second mark.

(9) **A** **Yes.**

(10) Q Do you now see Mr. Campbell in the
(11) video?

(12) **MS. MASSIMI:** I want it to be clear
(13) that you can show this witness this video to him
(14) so that the bottom portion of the screen is not
(15) obscured. I need you to fix it so there is no
(16) obstruction there during the entire course of your
(17) questioning.

(18) Q Did you see Mr. Campbell's position
(19) change?

(20) **MS. MASSIMI:** We are going to call
(21) the court. We are going to call the court about
(22) this.

(23) **MR. MCGAHA:** Okay.

(24) **MS. MASSIMI:** Off the record.

(25) (Whereupon, a discussion was held

(1)

ALDEMEL SPENCER

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(2)

off the record.)

(3)

MS. MASSIMI: Mr. McGaha, are you
able to proceed removing that obstruction?

(5)

MR. MCGAHA: I am going to show you
the video in the only way that I can on my laptop.
If you cannot see something, please say that you
cannot see it.

(9)

MS. MASSIMI: I am asking you a
question.

(11)

Q Are you ready to proceed?

(12)

A Yes.

(13)

MS. MASSIMI: I am asking my
question. Excuse me. I am asking you a question.
I would like you to answer my question as to
whether your able to show that video without the
obstruction?

(18)

MR. MCGAHA: As stated on the record
several times now that I am showing it in the only
way that I can from my laptop.

(21)

MS. MASSIMI: Except that
obstruction at various points disappears. For
what purpose can you not remove it during the
entirety of your questioning?

(25)

MR. MCGAHA: I'm starting my

(1)

ALDEMEL SPENCER

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(2)

questions now.

(3)

Q I am going to hit the play button.

(4)

If you cannot see something, please let me know.

(5)

A Yes, sir.

(6)

Q Do you see Mr. Campbell's position change before the eighteen-second mark on twenty-two-second mark?

(7)

A Yes.

(8)

Q What was that?

(9)

A Yes.

(10)

Q Do you see Mr. Campbell approaching Mr. Alzate?

(11)

A I don't even know. I see him turned to the side and then face-to-face.

(12)

Q Can you tell whether or not Kevin Campbell was approaching Augusto in an aggressive manner from where he was standing?

(13)

A From where I was standing, no.

(14)

Q Thank you.

(15)

A From where I was standing, no. At this point I am make my way down. I am not paying attention to what they are physically doing. I am trying to get down there to break them up.

(1) (b) ALDEMEL SPENCER 61

(2) Q So you can tell an altercation was
(3) occurring?

(4) A Yes.

(5) Q Do you know this gentleman here that
(6) is on the other side of the belt from Mr.
(7) Alzate's twenty-seven mark?

(8) A Yes, I remember him. He does not
(9) work there anymore.

(10) Q Do you remember his name?

(11) A No, I cannot remember seeing it. He
(12) works at a different belt. We see him and say
(13) what's up. He is at the LGA belt. I seen him
(14) when he was working there.

(15) Q If I told you his name was Jose
(16) Moreno, does that ring a bell?

(17) MS. MASSIMI: Objection. The person
(18) that you're pointing to is wearing a hat and mask.
(19) His face is not visible in any way.

(20) MR. MCGAHA: I am asking the
(21) witness.

(22) MS. MASSIMI: I am not going to
(23) permit you to proceed this way, Mr. McGaha. You
(24) are asking him about someone who I don't know if
(25) this is a man or woman, or the gender of this

(1)

ALDEMEL SPENCER

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(2)

person. The only feature that is visible is this person's ear and hands. If you are so confident in your case ask some real questions, and please let's move this along for the sake of the witness.

(6)

(7)

Q We are at the seventeen-second mark, do you see that?

(8)

A Yes.

(9)

Q Do you recognize this person across from Mr. Alzate?

(11)

A Yes, I know who that is.

(12)

Q You know?

(13)

A Yes.

(14)

Q That is the gentleman in a hat?

(15)

A Yes.

(16)

Q If I told I his name was Jose Merango, does that ring a bell?

(18)

A The name Jose rings a bell.

(19)

Q Does this appear to be a person that you knew as Jose?

(21)

A Yes.

(22)

Q About how many feet is Jose standing from the altercations that appears to be occurring at the now the twenty-nine second mark between Mr. Alzate and Mr. Campbell?

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(1) ALDEMEL SPENCER 63
(2) **A** **Less than five feet.**
(3) **Q** Less than five feet?
(4) **A** **Yes.**
(5) **Q** Does he have a pretty good view from
(6) what you are seeing here and what is occurring
(7) here?
(8) **A** **He is looking at him right in the**
(9) **face.**
(10) **Q** Does he have a better view than you
(11) as to what is occurring?
(12) **A** **Yes.**
(13) **Q** At what point do you see him come in
(14) to the frame? I am going to back it up and I am
(15) now at the nineteen-second mark. I want you to
(16) tell me when you see him coming into the frame,
(17) approximately.
(18) **A** **Yes.**
(19) **Q** Okay.
(20) **A** **About twenty or twenty-one is when I**
(21) **first seen his legs.**
(22) **Q** How many feet away would he be at
(23) this point?
(24) **A** **I would say between five and ten**
(25) **maybe.**

(1)

ALDEMEL SPENCER

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(2)

Q Between five and ten feet?

(3)

A Yes.

(4)

Q At the twenty-one-second mark?

(5)

A Yes.

(6)

Q Does he have a better view at this point at twenty-two second mark than you would have?

(9)

A Yes, at that point I could only see from the back. I could seen see from the back. At this point I can only see from the back. He has a side view and he can see better.

(13)

Q I am going to continue playing the video.

(15)

MS. MASSIMI: Please. I see that you have now removed the obstruction. Please move your cursor so that the obstruction at the bottom of the screen is gone. I would like to note for the record that Mr. McGaha is intentionally obstructing the video that he is showing the witness. You know that you are.

(22)

Q You are sitting right next to me?

(23)

A Yes.

(24)

Q Does it appear that I tried to obscure the video at any point during this

(1) ALDEMEL SPENCER 65

(2) deposition for you?

(3) **A** **No.**

(4) **MS. MASSIMI: You have. Mr. McGaha,**
(5) **you know that you have.**

(6) Q I have a few more questions for you.
(7) Thank you for your time today. You said that you
(8) did not speak with me last week at one point
(9) during your deposition today; is that correct?

(10) **A** **Repeat the question.**

(11) Q I believe you testified earlier when
(12) asked that you did not speak to me last week; is
(13) that correct?

(14) **A** **No, I said I didn't speak to you.**
(15) **You were on the phone with Eric. I was in front**
(16) **of Eric and he was on the phone with Eric.**

(17) Q You also testified that you were
(18) told that you with would not be paid if you did
(19) not do the deposition at the Fedex location, do
(20) you remember testifying to that?

(21) **A** **Yes.**

(22) Q Who told you that?

(23) **A** **Eric Wanders.**

(24) Q When did he tell you that?

(25) **A** **I am not sure. I don't remember if**

(1)

ALDEMEL SPENCER

66

(2)

it was yesterday or Thursday when he gave me the subpoena. One of those days recently. Since the last few days I have been having so many conversations with you guys. I remember the subjects what it was. It was either yesterday he told me that or Thursday. It was last week.

(8)

(9)

Q Do you remember exactly what he told you?

(10)

(11)

A That pretty much I had to do it.

Basically he was saying a mutual location that everybody agreed on.

(13)

Q A mutual location?

(14)

(15)

(16)

(17)

(18)

A It was one of those words. I am not sure. Like a location that everybody agreed upon. I am not sure if he said mutual or neutral. Something of that nature that everybody agreed upon.

(19)

(20)

Q So, if he told you that you needed to appear at a neutral location?

(21)

A Yes.

(22)

(23)

(24)

Q But did he tell you if you appeared at a neutral location you would not be paid or you would be paid?

(25)

A No, what he said was if I decided to

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(1)

ALDEMEL SPENCER

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(2)

do it at home I wouldn't be paid. If I did it at a location that every party agreed upon then I wouldn't be paid.

(5)

Q Understood. I want to make sure this is clear. I believe what you said earlier that you were told that you would not be paid if you did not do it at a Fedex location?

(9)

A Yes.

(10)

Q Okay.

(11)

A I guess at that location. I'm mixing it up. I didn't know what Wall Street building it was. I didn't know that it was a law firm or Fedex building. I found out this morning that it was an attorney building. The whole time I am thinking it might be a Fedex building. I thought that would have been a court building. It has to be somewhere with Fedex. I didn't know. I saw 88 Pine Street. I didn't know what type of building that was.

(21)

Q Is it your testimony that you were not told that if you showed up at 88 Pine Street, which is at Wall Street and I want to make sure this is clear, did Eric Wander tell you if you went to 88 Pine Street you would not be paid?

(1) ALDEMEL SPENCER 68

(2) A No, that was the first location. He

(3) didn't tell me that.

(4) Q Thank you. Did Miss Massimi tell

(5) you that?

(6) A No, she didn't tell me anything

(7) about my pay.

(8) Q Did Miss Massimi tell you in

(9) addition to the forty dollars that she paid you

(10) that was what she was legally to pay you for gas

(11) mileage?

(12) A No, she never said anything about

(13) gas mileage.

(14) Q She is required to send you money

(15) for gas mileage, as well. Make sure you keep

(16) your gas mileage.

(17) MS. MASSIMI: On the record, I am

(18) more than happy to compensate you for your

(19) expenses today, sir. I have tried weeks ago to

(20) get responses from Mr. McGaha how he wanted me to

(21) facilitate these payments. I received no response

(22) and no respect or cooperation from him. Any other

(23) expenses that you have, please let me know. As I

(24) have repeatedly said, I want to make sure that you

(25) are receiving everything that you are entitled to

(1)

ALDEMEL SPENCER

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(2)

receive here today.

(3)

Q What is your phone number?

(4)

A 347-968-9023.

(5)

(6)

Q Would you consider Kevin Campbell a friend?

(7)

A Yes, I guess.

(8)

(9)

Q How often do you speak with Kevin Campbell?

(10)

A Not much, at all. We were close when he worked there. Since he left I have not.

(12)

(13)

Q Do you recall having a conversation with Mr. Campbell since this lawsuit was filed?

(14)

A I had a conversation with him.

(15)

(16)

Q About how many times have you spoken with him since this lawsuit was filed, ballpark?

(17)

A No more than would I say once or twice. When people put me in bad situations I have to subtract from the situation. We have not spoken much since then.

(21)

(22)

Q Do you feel like he has put you in a bad situation?

(23)

(24)

A Yes, I never had to deal with any of this situation before. No courts or anything. No witness testimony or nothing. This is a first

(1)

ALDEMEL SPENCER

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(2)

for me.

(3)

Q When you spoke with Kevin Campbell at any point, do you know whether or not he told you that he was recording a phone call?

(6)

A No.

(7)

Q He did not tell you that?

(8)

A No.

(9)

Q I'm going to play a portion of the audio recording.

(11)

A Yes.

(12)

Q I want you to listen to it and tell me whether or not you recognize the call and whether or not you recognize them and if you do know who they are.

(16)

A Yes.

(17)

Q I'm going to play it for you. If you cannot hear this, please let me know.

(19)

A He was illegally recording me.

(20)

Q I want you to listen and tell me whether or not you recognize the voices on this call?

(23)

A Okay.

(24)

MR. MCGAHA: Give me one second. I am going to mute this call and move over here.

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(1) ALDEMEL SPENCER 71
(2) MS. MASSIMI: If you are playing a
(3) recording for the witness, I cannot hear it. You
(4) are muted.
(5) MR. MCGAHA: Can you hear me now?
(6) MS. MASSIMI: Yes, you have un-muted
(7) yourself. Previously you were playing the
(8) recording to the witness on mute to the rest of
(9) us.
(10) MR. MCGAHA: Can you hear me?
(11) MS. MASSIMI: Yes.
(12) MR. MCGAHA: I am going to start
(13) over to the beginning. I apologize. I didn't
(14) know that I was on mute.
(15) Q Can you hear?
(16) A Yes.
(17) MS. MASSIMI: I cannot hear what you
(18) are playing. Play it from your phone.
(19) MR. MCGAHA: I cannot.
(20) MS. MASSIMI: I cannot hear what you
(21) are playing to him.
(22) MR. MCGAHA: Okay. I am playing him
(23) what was marked as Plaintiff's production number
(24) seventy six. I am not sure, other than this
(25) deposition being in person, I am not sure how to

(1)

ALDEMEL SPENCER

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(2)

rectify the situation.

(3)

MS. MASSIMI: Did you hear what the
clerk court was saying when I called the court?

(4)

MR. MCGAHA: About what?

(5)

MS. MASSIMI: Anything. Did you
hear the court clerk?

(6)

MR. MCGAHA: Yes.

(7)

MS. MASSIMI: Because I was calling
her on my phone. You need play it from the phone
and not through some device. You have to play it
from something else and hold it up to the speaker.

(8)

MR. MCGAHA: Off the record.

(9)

(Whereupon, a discussion was held
off the record.)

(10)

MS. MASSIMI: We should split the
cost of this witness. I am not sure what is going
on. I think we are going to have to split the
cost of this transcript since you are doing a lot
of questioning. Can you pull it up on your
computer and screen share it?

(11)

MR. MCGAHA: I will try that.

(12)

MS. MASSIMI: I would prefer it to
be on the record if he has a question. If he is
saying something I would prefer it to be on the

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(1) ALDEMEL SPENCER 73

(2) record.

(3) MR. MCGAHA: Can you hear it?

(4) MS. MASSIMI: No.

(5) MR. MCGAHA: Can you hear it now?

(6) MS. MASSIMI: No, I cannot.

(7) MR. MCGAHA: You still cannot hear
(8) it?

(9) MS. MASSIMI: No.

(10) MR. MCGAHA: Sharing the screen does
(11) not work. This is what I was afraid of for having
(12) this deposition virtually. I cannot play this.

(13) MS. MASSIMI: Then I supposed you
(14) should have discussed that with me instead of
(15) hanging up on me and refusing to discuss a
(16) resolution. If that was a concern of yours you it
(17) would have been helpful for you to mention it. At
(18) no point did you mention it.

(19) MR. MCGAHA: I am going to the room
(20) next door and play this video so we don't have any
(21) feedback. I'm going to set this up.

(22) MS. MASSIMI: The court is calling
(23) us.

(24) MR. MCGAHA: Okay. Off the record.
(25) (Whereupon, a discussion was held

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(1)

ALDEMEL SPENCER

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(2) off the record.)

(3) MS. MASSIMI: What are your plans at
(4) the moment? Do you intend to figure out this
(5) recording or are we taking a break? This has gone
(6) far longer than anticipated and what I had wished.

(7) MR. MCGAHA: I didn't hear that.

(8) MS. MASSIMI: What are your plans?
(9) Are you going to attempt to figure out this audio
(10) issue? Are you ending the deposition? We had the
(11) witness longer than he should.

(12) MR. MCGAHA: We are going to ask the
(13) witness about this secret recording that was done
(14) by your client.

(15) MS. MASSIMI: Are you going to
(16) figure out how to do that?

(17) MR. MCGAHA: I am working on that
(18) now. Thank you. Off the record.

(19) (Whereupon, a discussion was held
(20) off the record.)

(21) MR. MCGAHA: Back on the record.

(22) Q I am not able to play Plaintiff's
(23) production number 76 Spencer recording. That is
(24) the one that was produced by the Plaintiff in
(25) this case. I can play it, but I cannot play it

(1) ALDEMEL SPENCER 75
(2) so that Miss Massimi can hear it. I've attempted
(3) to play this recording and have been
(4) unsuccessful. I still would like to ask you some
(5) questions about it because you can hear it.
(6) MS. MASSIMI: You are going to play
(7) him the recording?
(8) MR. MCGAHA: Yes.
(9) MS. MASSIMI: I can pull it up.
(10) Hold on. Which one are you asking him about?
(11) MR. MCGAHA: Seventy six.
(12) MS. MASSIMI: Tell me which one you
(13) are asking about?
(14) MR. MCGAHA: Zero zero. When I
(15) pause I will let you know when I pause. I will
(16) play it and when I pause I will tell you where I
(17) paused.
(18) MS. MASSIMI: Yes. Are you playing
(19) it right now? I will then play it.
(20) MR. MCGAHA: I playing it right now.
(21) MS. MASSIMI: Alright. Are you
(22) planning to play him the entire recording?
(23) MR. MCGAHA: I am not sure yet.
(24) MS. MASSIMI: It is a twenty minute
(25) recording.

(1)

ALDEMEL SPENCER

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(2)

MR. MCGAHA: I am stopping at the

(3)

thirty-one mark.

(4)

MS. MASSIMI: Hold on one second.

(5)

Alright.

(6)

Q Did you recognize the voice on that phone call?

(8)

A **No comment.**

(9)

Q I believe you testified before, but I am not sure so I have to ask it again. Do you recall Mr. Campbell ever telling you that he was recording a phone call that the two of you had?

(13)

A **He never told me about any recording.**

(15)

Q Okay. Have you ever spoken with Miss Massimi?

(17)

A **I have spoken with her a few times.**

(18)

Q Has Miss Massimi told you about a phone call that she had that was between you and Mr. Campbell?

(21)

A **No, everything that he did was illegal recording. Illegal everything.**

(23)

Q Do you still feel like Kevin Campbell is a friend?

(25)

A **No comment.**

(1)

ALDEMEL SPENCER

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(2)

Q Is there anything else that we have not discussed today that you want to discuss on the record?

(5)

A No, I want it to be over at this point. Illegal recording and racial things. I want this to be over with.

(8)

MR. MCGAHA: No questions. Thank you.

(10)

MS. MASSIMI: No questions for me. Thank you so much.

(12)

THE WITNESS: One question. At this point, where do I stand? Am I done with this situation or where do I go from here? Am I going to be subpoenaed again?

(16)

MS. MASSIMI: My understanding is that I don't have any intentions to subpoena you again unless this case goes to trial in which case it is possible you could be subpoenaed to testify at trial. Then there are also methods by which me and Mr. McGaha can stipulate to certain things that would negate your need to appear. I don't have any current plans or need for you to have to do anything else regarding this lawsuit.

(25)

THE WITNESS: Thank you. That is

(1)

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(2)

all I want to know.

(3)

MS. MASSIMI: Again, your employer cannot retaliate against you for even the comments that you heard on the phone call to Mr. Campbell. If you have a question about your rights you can seek an attorney on the internet and a bunch of resource that you can look at.

(4)

THE WITNESS: I will seek out an attorney.

(5)

MR. MCGAHA: For any issues arising from this case?

(6)

MS. MASSIMI: There would be no reason for him to seek out an attorney as far as I can see it unless his employer began to retaliate against him.

(7)

MR. MCGAHA: Did you ask for one earlier?

(8)

THE WITNESS: I said I would need an attorney about that illegal recording thing. I know that it is illegal to be recording on the phone for that to be used in a courtroom or any type of situation like this without my knowledge. Kevin never told me that he was recording anything like that. I know what he did was illegal and

(1)

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(2)

that it cannot be used in court.

(3)

MS. MASSIMI: My point is that Mr. McGaha brought it up here today. He has had it for over a month and did not show it to you.

(6)

THE WITNESS: This is the first time of me hearing anything about a recording. I was not aware of it until now.

(9)

MR. MCGAHA: We received this from the Plaintiff. Obviously, Kevin Campbell has it. She sent it to me. Miss Massimi sent it. No one has hard it from FedEx. You are the first person to hear it. No other person from FedEx ever heard this recording. Only you know about it, Kevin Campbell, me and Miss Massimi. They have known about it longer than I have because they are required to do that under the rules. That is the reason I have it. I cannot give you advice on that.

(20)

THE WITNESS: I know that is illegal.

(22)

MS. MASSIMI: So does that answer your questions, sir? Do you have any further questions?

(25)

THE WITNESS: No, I am fine.

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(2) MR. MCGAHA: I think he understands.

(3) I think we are done here.

(4) MS. MASSIMI: Thank you, sir. Best
(5) of everything in your career.

(6)

(7) (Whereupon, the proceedings were
(8) concluded at 1:00 p.m.)

(9)

(10) -----

(11) ALDEMEL SPENCER

(12)

(13) Subscribed and sworn to
(14) before me this ____ day
(15) of _____, 2024.

(16) -----

(17) NOTARY PUBLIC

(18)

(19)

(20)

(21)

(22)

(23)

(24)

(25)

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(7)	NONE	
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(3)

NO : DESCRIPTION :

(4)

NONE

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(1)

CERTIFICATION

(2)

(3)

(4)

(5)

(6)

I, KAREN MCCONNELL, hereby certify
that the within was held before me on the 13th
day of March, 2024.

(7)

(8)

That the testimony was taken
stenographically by myself.

(9)

(10)

That the within transcript is a true
and accurate record.

(11)

(12)

(13)

(14)

(15)

That I am not connected by blood or
marriage with any of the parties. I am not
interested directly or indirectly in the matter in
controversy.

(16)

(17)

(18)

IN WITNESS WHEREOF, I have hereunto
set my hand this 14th day of March, 2024.

(19)

(20)

(21)

(22)

(23)

(24)

--*Karen McConnell*-----

KAREN MCCONNELL

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(1)

ERRATA SHEET FOR: ALDEMEL SPENCER

(2)

ALDEMEL SPENCER, being duly sworn, deposes and
says: I have reviewed the transcript of my
proceeding taken on 03/13/2024. The following
changes are necessary to correct my testimony.

(6)

PAGE	LINE	CHANGE	REASON
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(21)

Witness Signature: _____

(22)

Subscribed and sworn to, before me

(23)

this ____ day of _____, 20 ____.

(24)

(25)

(NOTARY PUBLIC) MY COMMISSION EXPIRES

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